



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

11201 Renner Boulevard
Lenexa, Kansas 66219

SEP 26 2014

VIA ELECTRONIC MAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Kelly Bosserman, Esq.
310 Germantown Bend Cove
Suite 104
Memphis, Tennessee 38018

Re: Offer to Conduct Pre-filing Negotiations

Dear Mr. Bosserman:

This letter concerns the compliance status of Coastal Energy Corporation (CEC) of Willow Springs, Missouri. On February 10, 2014 and March 18, 2014, representatives of the U.S. Environmental Protection Agency conducted an inspection of the CEC facility to determine its compliance with the Facility Response Plan and Spill Prevention, Control, and Countermeasure rules of the Oil Pollution Act of the Clean Water Act. On June 20, 2014, EPA transmitted an information request to CEC pursuant to Section 114 of the Clean Air Act. EPA received CEC's response to this information request on July 1, 2014. On July 10, 2014, a representative of EPA, accompanied by the State of Missouri, conducted an inspection to determine the facility's compliance with stormwater requirements of the Clean Water Act and the Missouri Clean Water Law, specifically to determine the facility's compliance with the National Pollution Discharge Elimination System industrial stormwater permit issued to the facility. Copies of these inspection reports were previously transmitted to CEC. The information received as a result of these inspections and subsequent information request documented CEC:

- Failed to develop a Facility Response Plan, in violation of CWA Section 311(j) and its implementing regulations found at 40 C.F.R. 112;
- Failed to develop and implement an adequate Spill Prevention, Control and Countermeasure Plan, in violation of CWA Section 311(j) and its implementing regulations found at 40 C.F.R. 112;
- Failed to submit a Tier II Form for propane for 2013, in violation of Section 312 of the Emergency Planning and Community Right-to-Know Act;
- Failed to comply with the requirements of the facility's NPDES industrial stormwater permit, in violation of CWA Section 402(p) and the Missouri Clean Water Law;
- Failed to prevent unauthorized stormwater discharges, in violation of CWA Section 301 and the Missouri Clean Water Law; and
- Failed to obtain NPDES industrial stormwater permit coverage for the maintenance, and storage portions of the facility, in violation of CWA Section 402(p) and the Missouri Clean Water Law.

60-Day Pre-Filing Negotiations

EPA and the State of Missouri believe that significant facility and operational improvements are needed to correct the noncompliance observed at the facility, and significant penalties are warranted given the seriousness of the violations. EPA and the State of Missouri are seeking to bring an administrative or judicial action seeking injunctive relief and penalties for violations documented at the CEC facility. **By this letter, we are offering you an opportunity to negotiate a resolution of the proposed penalty prior to the initiation of a more formal action.** EPA and the State of Missouri prefer to resolve this matter through pre-filing negotiations. However, if we have engaged in discussions and are unable to resolve the matter within 60 days of your receipt of this letter, the EPA and the State may pursue other enforcement options, including the filing of a formal complaint or referring this matter to the Department of Justice for enforcement. **In order to resolve this matter through pre-filing negotiations, you will be required to address compliance in accordance with the requirements detailed in Attachment A.** If a settlement is reached in this matter, it would be memorialized by entering into a Consent Agreement and Final Order with EPA and entering into a Consent Judgment with the State of Missouri.

Supplemental Environmental Projects

You are strongly encouraged to consider mitigating a portion of the penalty by performing a Supplemental Environmental Project. A SEP is a project purchased or performed by a violator that provides significant environmental benefits and has a nexus to the environmental harm threatened or caused by the violations. In the case of CEC, this project might include equipment or technology, not otherwise required by law, which would allow CEC to more effectively prevent or respond to a potential release from the CEC facility. More information concerning the use of SEPs in settlement actions can be found at <http://www.epa.gov/compliance/civil/seps/index.html> or by contacting me at the phone number listed below.

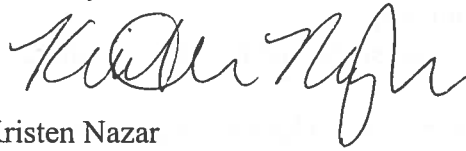
Ability to Pay

As part of these pre-filing negotiations, EPA and the State of Missouri will consider any additional information that you have that is relevant to the penalty, including information regarding CEC's ability to pay a financial penalty. If you wish to settle this matter, but CEC believes it does not have the financial ability to pay the agency's proposed penalty, this is also an opportunity for CEC to provide the agency with appropriate financial documentation to substantiate such a claim. If CEC chooses to make such a claim, please do so within 14 days of your receipt of this letter.

EPA and the State of Missouri firmly believe that pre-filing negotiations offer all parties an opportunity to quickly and amicably reach settlement without protracted litigation. If you are interested in engaging in pre-filing discussions to attempt to reach a prompt settlement of this matter, please contact me at 913-551-7450 within 10 days of receipt of this letter, and I will coordinate with Brook McCarrick at the Missouri Attorney General's Office regarding resolution of this matter. If EPA does not hear from you by that date, EPA and the State of Missouri will assume CEC is not interested in pursuing pre-filing negotiations.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kristen Nazar', written in a cursive style.

Kristen Nazar
Assistant Regional Counsel

Attachment

cc: Brook McCarrick, Assistant Attorney General, Office of Attorney General

Attachment A

Facility Response Plan Compliance

The Facility Response Plan submitted by CEC in June 2014 is inadequate. Specifically, to return to compliance, CEC must:

- Complete the Substantial Harm Certification.
- Provide adequate secondary containment to the asphaltic tanks. Table 5.0 lists the tanks and indicates that secondary containment for the asphaltic tanks is provided by a dike. The reported “dike” was not evident to EPA personnel during the site inspection.
- Properly calculate the Worst Case Discharge (WCD) volume. Because the facility has inadequate secondary containment, the WCD is the entire volume of the tanks lacking adequate secondary containment plus the volume of the largest tank within secondary containment, in this case 1,800,000 gallons. The FRP erroneously states that the WCD is the volume of the largest asphalt tank, 420,000 gallons.
- Properly calculate the response resource requirements. Because the WCD is not calculated properly, the response resource requirements are also not calculated properly. The larger WCD would require more response resources than what the plan currently identifies.
- Ensure that the Oil Spill Response Organization (“OSRO”) can respond to a release at the facility. Specifically, the FRP states that the facility will rely on the OSRO to meet the annual equipment deployment requirements, but the OSRO is not identified by name, or location, or response time. No evidence is provided that the OSRO can meet the response resource needs of the facility and no evidence of a contractual agreement is provided.
- Properly calculate the Planning Distance. The Planning Distance is based on the annual mean flow velocity of 0.95 fps based on historical readings from a nearby USGS river gauging station. FPR guidance indicates that Planning Distance calculations should assume flow during “adverse weather”. Generally, EPA takes this to mean wet weather flow conditions and use a 90% flow (velocity) value rather than the annual mean. Using this 90% velocity of 3.05 fps would extend the planning distance to more than 50 miles, further than the 20 miles assumed in the FRP.
- Ensure that the facility maintains containment boom on-site. The Plan states that the facility will maintain 1,000 feet of containment boom on-site, but the list of OSRO-owned and facility-owned response equipment indicates that neither has 1,000 feet of containment boom in inventory.

Spill Prevention, Control, and Countermeasure Plan Compliance

CEC had an inadequate SPCC plan at the time of February 2014 inspection, which was updated and resubmitted in August 2014. This updated plan remains inadequate. Specifically, CEC must update the facility’s SPCC plan to include, but not be limited to, the following:

- Revise the facility diagram to show the locations of all transfer stations and connecting pipes, including locations for the loading rack(s), and the locations for all areas of portable storage containers, pursuant to 40 C.F.R. § 112.7(a)(3). The Plan should be revised to provide a general description of where portable storage containers are located, an estimate of the number of containers, types of oil, and anticipated storage capacities. The Plan needs to provide information regarding conformance with the positioning requirements to prevent a discharge, pursuant to 40 C.F.R. § 112.8(c)(11).
- Provide an integrity testing schedule for each of the facility’s tanks and containers, including dates and type of testing required, pursuant to 40 C.F.R. § 112.8(c)(6).

- CEC cites inventory control, which is not an appropriate manner of overfill protection method, in its Plan. The facility may rely on direct vision gauges for overfill protection control, but must ensure the facility's procedures comply with the requirements of §112.8(c)(8)(iv).
- Additionally, CEC must ensure it has adequate secondary containment and discharge response procedures, as described above.

EPCRA Tier II Compliance

To document compliance with EPCRA requirements, CEC must:

- Submit a Tier II form for propane for calendar year 2013 to the SERC, LEPC, and fire department.

Industrial Stormwater Compliance

To comply with the requirements of CEC's NDPES Industrial Stormwater Permit, CEC must:

- Cease unauthorized discharges. CEC is only permitted to discharge when rainfall exceeds the 1 in 10 year or the 24 hour, 25 year rainfall events. CEC must remove unpermitted discharge pipes and comply with the land application requirements of its permit, including the monitoring and reporting requirements in Section A of the permit.
- Obtain permit coverage for eastern, unpermitted portion of Site.
- Identify all permitted outfalls. All outfalls must be clearly marked in the field. The permitted outfalls are listed in Section A of the permit.
- Conduct monitoring. Monitoring shall take place once per day while discharging. CEC must monitor levels of TSS, pH, Oil & Grease, and settleable solids.
- Submit adequate (thorough) annual reports.
- Develop an adequate SWPPP and implement its requirements. An adequate SWPPP will include all requirements as outlined in section C. 7-9 of the permit. The SWPPP submitted on the last day of the July 2014 EPA inspection was incomplete.
- Develop an Operations & Maintenance Manual, which includes key operating procedures and a brief summary of the operation of the facility. This manual should be developed by CEC and made available to all operators.
- Visually inspect the tank system monthly to identify problem areas that could lead to a leak. Areas to inspect include tank foundations, connections, coatings, tank walls, and the piping system for corrosion, leaks, or other physical damage that may weaken the tank system. A log of such inspections must be kept on-site for a period of five years.
- Report unauthorized discharges to MDNR within 24 hours. An unauthorized discharge is any discharge not allowed by the permit. The report to MDNR must include the date, time, duration, and quantity of the discharge and the reason for the discharge. The report must also include a description of corrective action taken/to be taken by the facility to prevent recurrence of such a discharge and the date of completion of any planned repairs needed.
- Confirm that stormwater "basin" is clay lined, given this could not be verified during the EPA inspection.

Additional Injunctive Relief for Settlement Purposes:

- FRP, SPCC plan, SWPPP, and regular inspections to be posted on CEC's website. This increased transparency will keep the surrounding community informed of the compliance status and safety measures in place at the CEC facility.
- Install technology or equipment that would assist the facility in responding to flood conditions at the facility, given CEC is located in the 100-year flood plain.

- Discuss technology optimal for responding to a release, such as different responses associated with ethanol vs. liquid asphalt and the Karst topography within the area.
- Conduct solid waste collection in the local community.
- Conduct environmental education to emergency responders in the local community.
- Conduct annual independent third party compliance audits, in accordance with ISO 14000 procedures, for a period of three years.